

Introduced by Senator Cannella

February 16, 2011

An act to amend Sections 3370 and 4453 of the Labor Code, relating to workers' compensation benefits.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as introduced, Cannella. Jail inmates: workers' compensation benefits: temporary disability benefits.

Existing law provides that each inmate of a state penal or correctional institution shall be entitled to workers' compensation benefits for injury arising out of and in the course of assigned employment and for the death of the inmate if the injury proximately causes death, subject to certain conditions, as specified.

This bill would provide that inmates of a city or county jail shall also be entitled to workers' compensation benefits, as provided.

Existing law requires the Department of Corrections and Rehabilitation to present each inmate of a state penal or correctional institution, prior to his or her first assignment to work at the institution, with a printed statement of his or her rights in regard to the above provisions, and a description of the procedures to be followed in filing for workers' compensation benefits.

This bill would require a city or county jail facility to present each inmate with a printed statement of his or her rights in regard to the above provisions, and a description of the procedures to be followed in filing for workers' compensation benefits. This bill would provide that inmates in a city or county jail shall have any temporary disability benefits from a preexisting injury sent to the dependents of the inmate, or, if the inmate has no dependents, to be held in trust by the jail facility.

By imposing new duties on a city or county jail, this bill would impose a state-mandated local program.

Existing law provides that the Department of Corrections and Rehabilitation shall have medical control over treatment provided an injured inmate while incarcerated in state prison. Existing law provides that in serious cases the inmate is entitled, upon request, to the services of a consulting physician.

This bill would state that a city or county jail facility's staff shall have medical control over treatment provided an injured inmate while incarcerated in a city or county jail. This bill would provide that in serious cases the inmate of a city or county jail is entitled, upon request, to the services of a consulting physician.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or and in the course of, employment. Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability, permanent total disability, permanent partial disability, and in case of death. Existing law requires, in computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, that the average weekly earnings be taken, for injuries occurring on or after January 1, 2006, at not less than \$189, nor more than \$1,260 or 1.5 times the state average weekly wage, whichever is greater, and commencing January 1, 2007, and each January thereafter, requires that those limits be increased by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year.

This bill would require, in computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, on or after January 1, 2012, that the average weekly earnings be taken at not less than the lesser of \$189 or 1.5 times the employees's average weekly earnings from all employers, nor more than \$1,260 or 1.5 times the state average weekly wage, whichever is greater.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3370 of the Labor Code is amended to
2 read:

3 3370. (a) Each inmate of a state penal or correctional
4 institution, *or of a city or county jail*, shall be entitled to the
5 workers' compensation benefits provided by this division for injury
6 arising out of and in the course of assigned employment and for
7 the death of the inmate if the injury proximately causes death,
8 subject to all of the following conditions:

9 (1) The inmate was not injured as the result of an assault in
10 which the inmate was the initial aggressor, or as the result of the
11 intentional act of the inmate injuring himself or herself.

12 (2) The inmate shall not be entitled to any temporary disability
13 indemnity benefits while incarcerated in a state prison, *or in a city*
14 *or county jail*.

15 (3) No benefits shall be paid to an inmate while he or she is
16 incarcerated. The period of benefit payment shall instead
17 commence upon release from incarceration. If an inmate who has
18 been released from incarceration, and has been receiving benefits
19 under this section, is reincarcerated in a city or county jail, or state
20 penal or correctional institution, the benefits shall cease
21 immediately upon the inmate's reincarceration and shall not be
22 paid for the duration of the reincarceration.

23 (4) This section shall not be construed to provide for the
24 payment to an inmate, upon release from incarceration, of
25 temporary disability benefits which were not paid due to the
26 prohibition of paragraph (2).

27 (5) In determining temporary and permanent disability indemnity
28 benefits for the inmate, the average weekly earnings shall be taken
29 at not more than the minimum amount set forth in Section 4453.

30 (6) Where a dispute exists respecting an inmate's rights to the
31 workers' compensation benefits provided herein, the inmate may

1 file an application with the appeals board to resolve the dispute.
2 The application may be filed at any time during the inmate's
3 incarceration.

4 (7) After release or discharge from a correctional institution,
5 *including a city or county jail*, the former inmate shall have one
6 year in which to file an original application with the appeals board,
7 unless the time of injury is such that it would allow more time
8 under Section 5804 ~~of the Labor Code~~.

9 (8) The percentage of disability to total disability shall be
10 determined as for the occupation of a laborer of like age by
11 applying the schedule for the determination of the percentages of
12 permanent disabilities prepared and adopted by the administrative
13 director.

14 (9) This division shall be the exclusive remedy against the state
15 for injuries occurring while engaged in assigned work or work
16 under contract. Nothing in this division shall affect any right or
17 remedy of an injured inmate for injuries not compensated by this
18 division.

19 (b) (1) The Department of Corrections *and Rehabilitation* shall
20 present to each inmate of a state penal or correctional institution,
21 prior to his or her first assignment to work at the institution, a
22 printed statement of his or her rights under this division, and a
23 description of procedures to be followed in filing for benefits under
24 this section. The statement shall be approved by the administrative
25 director and be posted in a conspicuous place at each place where
26 an inmate works.

27 (2) *The city or county jail shall present to each inmate of a city*
28 *or county jail facility, prior to his or her first work assignment, a*
29 *printed statement of his or her rights under this section, and a*
30 *description of procedures to be followed in filing for benefits under*
31 *this section. The statement shall be approved by the administrative*
32 *director of the jail and be posted in a conspicuous place at each*
33 *facility.*

34 (c) (1) Notwithstanding any other provision of this division,
35 the Department of Corrections *and Rehabilitation* shall have
36 medical control over treatment provided an injured inmate while
37 incarcerated in a state prison, except, that in serious cases, the
38 inmate is entitled, upon request, to the services of a consulting
39 physician.

1 (2) *Notwithstanding any other provision of this division, a city*
2 *or county jail facility's staff shall have medical control over the*
3 *treatment provided an injured inmate while incarcerated in a city*
4 *or county jail, except that in serious cases, the inmate is entitled,*
5 *upon request, to the services of a consulting physician.*

6 (d) (1) Paragraphs (2), (3), and (4) of subdivision (a) shall also
7 be applicable to an inmate of a state penal or correctional institution
8 who would otherwise be entitled to receive workers' compensation
9 benefits based on an injury sustained prior to his or her
10 incarceration. However, temporary and permanent disability
11 benefits which, except for this subdivision, would otherwise be
12 payable to an inmate during incarceration based on an injury
13 sustained prior to incarceration shall be paid to the dependents of
14 the inmate. If the inmate has no dependents, the temporary
15 disability benefits which, except for this subdivision, would
16 otherwise be payable during the inmate's incarceration shall be
17 paid to the State Treasury to the credit of the Uninsured Employers
18 Fund, and the permanent disability benefits which would otherwise
19 be payable during the inmate's incarceration shall be held in trust
20 for the inmate by the Department of Corrections *and Rehabilitation*
21 during the period of incarceration.

22 (2) *Paragraphs (2), (3), and (4) of subdivision (a) shall also be*
23 *applicable to an inmate of a city or county jail who would*
24 *otherwise be entitled to receive workers' compensation benefits*
25 *based on an injury sustained prior to his or her incarceration.*
26 *However, temporary and permanent disability benefits which,*
27 *except for this subdivision, would otherwise be payable to an*
28 *inmate of a city or county jail during incarceration based on an*
29 *injury sustained prior to incarceration shall be paid to the*
30 *dependents of the inmate. If the inmate has no dependents, the*
31 *temporary disability benefits which, except for this subdivision,*
32 *would otherwise be payable during the inmate's incarceration,*
33 *and the permanent disability benefits which would otherwise be*
34 *payable during the inmate's incarceration shall be held in trust*
35 *by the jail facility during the period of incarceration.*

36 ~~For~~

37 (3) *For purposes of this subdivision, "dependents" means the*
38 *inmate's spouse or children, including an inmate's former spouse*
39 *due to divorce and the inmate's children from that marriage.*

(e) Notwithstanding any other provision of this division, an employee who is an inmate, as defined in subdivision (e) of Section 3351 who is eligible for vocational rehabilitation services as defined in Section 4635 shall only be eligible for direct placement services.

SEC. 2. Section 4453 of the Labor Code is amended to read:

4453. (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at:

(1) Not less than one hundred twenty-six dollars (\$126) nor more than two hundred ninety-four dollars (\$294), for injuries occurring on or after January 1, 1983.

(2) Not less than one hundred sixty-eight dollars (\$168) nor more than three hundred thirty-six dollars (\$336), for injuries occurring on or after January 1, 1984.

(3) Not less than one hundred sixty-eight dollars (\$168) for permanent total disability, and, for temporary disability, not less than the lesser of one hundred sixty-eight dollars (\$168) or 1.5 times the employee's average weekly earnings from all employers, but in no event less than one hundred forty-seven dollars (\$147), nor more than three hundred ninety-nine dollars (\$399), for injuries occurring on or after January 1, 1990.

(4) Not less than one hundred sixty-eight dollars (\$168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars (\$189) or 1.5 times the employee's average weekly earnings from all employers, nor more than five hundred four dollars (\$504), for injuries occurring on or after January 1, 1991.

(5) Not less than one hundred sixty-eight dollars (\$168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars (\$189) or 1.5 times the employee's average weekly earnings from all employers, nor more than six hundred nine dollars (\$609), for injuries occurring on or after July 1, 1994.

(6) Not less than one hundred sixty-eight dollars (\$168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars (\$189) or 1.5 times the employee's average weekly earnings from all employers,

nor more than six hundred seventy-two dollars (\$672), for injuries occurring on or after July 1, 1995.

(7) Not less than one hundred sixty-eight dollars (\$168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars (\$189) or 1.5 times the employee's average weekly earnings from all employers, nor more than seven hundred thirty-five dollars (\$735), for injuries occurring on or after July 1, 1996.

(8) Not less than one hundred eighty-nine dollars (\$189), nor more than nine hundred three dollars (\$903), for injuries occurring on or after January 1, 2003.

(9) Not less than one hundred eighty-nine dollars (\$189), nor more than one thousand ninety-two dollars (\$1,092), for injuries occurring on or after January 1, 2004.

(10) Not less than one hundred eighty-nine dollars (\$189), nor more than one thousand two hundred sixty dollars (\$1,260), for injuries occurring on or after January 1, 2005. For injuries occurring on or after January 1, 2006, average weekly earnings shall be taken at not less than one hundred eighty-nine dollars (\$189), nor more than one thousand two hundred sixty dollars (\$1,260) or 1.5 times the state average weekly wage, whichever is greater. Commencing on January 1, 2007, and each January 1 thereafter, the limits specified in this paragraph shall be increased by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year. For purposes of this paragraph, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12 months ending March 31 of the calendar year preceding the year in which the injury occurred.

(11) Not less than the lesser of one hundred eighty-nine dollars (\$189) or 1.5 times the employee's average weekly earnings from all employers, nor more than one thousand two hundred sixty dollars (\$1,260), for injuries occurring on or after January 1, 2012.

(b) In computing average annual earnings for purposes of permanent partial disability indemnity, except as provided in Section 4659, the average weekly earnings shall be taken at:

1 (1) Not less than seventy-five dollars (\$75), nor more than one
2 hundred ninety-five dollars (\$195), for injuries occurring on or
3 after January 1, 1983.

4 (2) Not less than one hundred five dollars (\$105), nor more than
5 two hundred ten dollars (\$210), for injuries occurring on or after
6 January 1, 1984.

7 (3) When the final adjusted permanent disability rating of the
8 injured employee is 15 percent or greater, but not more than 24.75
9 percent: (A) not less than one hundred five dollars (\$105), nor
10 more than two hundred twenty-two dollars (\$222), for injuries
11 occurring on or after July 1, 1994; (B) not less than one hundred
12 five dollars (\$105), nor more than two hundred thirty-one dollars
13 (\$231), for injuries occurring on or after July 1, 1995; (C) not less
14 than one hundred five dollars (\$105), nor more than two hundred
15 forty dollars (\$240), for injuries occurring on or after July 1, 1996.

16 (4) When the final adjusted permanent disability rating of the
17 injured employee is 25 percent or greater, not less than one hundred
18 five dollars (\$105), nor more than two hundred twenty-two dollars
19 (\$222), for injuries occurring on or after January 1, 1991.

20 (5) When the final adjusted permanent disability rating of the
21 injured employee is 25 percent or greater but not more than 69.75
22 percent: (A) not less than one hundred five dollars (\$105), nor
23 more than two hundred thirty-seven dollars (\$237), for injuries
24 occurring on or after July 1, 1994; (B) not less than one hundred
25 five dollars (\$105), nor more than two hundred forty-six dollars
26 (\$246), for injuries occurring on or after July 1, 1995; and (C) not
27 less than one hundred five dollars (\$105), nor more than two
28 hundred fifty-five dollars (\$255), for injuries occurring on or after
29 July 1, 1996.

30 (6) When the final adjusted permanent disability rating of the
31 injured employee is less than 70 percent: (A) not less than one
32 hundred fifty dollars (\$150), nor more than two hundred
33 seventy-seven dollars and fifty cents (\$277.50), for injuries
34 occurring on or after January 1, 2003; (B) not less than one hundred
35 fifty-seven dollars and fifty cents (\$157.50), nor more than three
36 hundred dollars (\$300), for injuries occurring on or after January
37 1, 2004; (C) not less than one hundred fifty-seven dollars and fifty
38 cents (\$157.50), nor more than three hundred thirty dollars (\$330),
39 for injuries occurring on or after January 1, 2005; and (D) not less
40 than one hundred ninety-five dollars (\$195), nor more than three

1 hundred forty-five dollars (\$345), for injuries occurring on or after
2 January 1, 2006.

3 (7) When the final adjusted permanent disability rating of the
4 injured employee is 70 percent or greater, but less than 100 percent:
5 (A) not less than one hundred five dollars (\$105), nor more than
6 two hundred fifty-two dollars (\$252), for injuries occurring on or
7 after July 1, 1994; (B) not less than one hundred five dollars (\$105),
8 nor more than two hundred ninety-seven dollars (\$297), for injuries
9 occurring on or after July 1, 1995; (C) not less than one hundred
10 five dollars (\$105), nor more than three hundred forty-five dollars
11 (\$345), for injuries occurring on or after July 1, 1996; (D) not less
12 than one hundred fifty dollars (\$150), nor more than three hundred
13 forty-five dollars (\$345), for injuries occurring on or after January
14 1, 2003; (E) not less than one hundred fifty-seven dollars and fifty
15 cents (\$157.50), nor more than three hundred seventy-five dollars
16 (\$375), for injuries occurring on or after January 1, 2004; (F) not
17 less than one hundred fifty-seven dollars and fifty cents (\$157.50),
18 nor more than four hundred five dollars (\$405), for injuries
19 occurring on or after January 1, 2005; and (G) not less than one
20 hundred ninety-five dollars (\$195), nor more than four hundred
21 five dollars (\$405), for injuries occurring on or after January 1,
22 2006.

23 (c) Between the limits specified in subdivisions (a) and (b), the
24 average weekly earnings, except as provided in Sections 4456 to
25 4459, shall be arrived at as follows:

26 (1) Where the employment is for 30 or more hours a week and
27 for five or more working days a week, the average weekly earnings
28 shall be the number of working days a week times the daily
29 earnings at the time of the injury.

30 (2) Where the employee is working for two or more employers
31 at or about the time of the injury, the average weekly earnings
32 shall be taken as the aggregate of these earnings from all
33 employments computed in terms of one week; but the earnings
34 from employments other than the employment in which the injury
35 occurred shall not be taken at a higher rate than the hourly rate
36 paid at the time of the injury.

37 (3) If the earnings are at an irregular rate, such as piecework,
38 or on a commission basis, or are specified to be by week, month,
39 or other period, then the average weekly earnings mentioned in
40 subdivision (a) shall be taken as the actual weekly earnings

1 averaged for this period of time, not exceeding one year, as may
2 conveniently be taken to determine an average weekly rate of pay.

3 (4) Where the employment is for less than 30 hours per week,
4 or where for any reason the foregoing methods of arriving at the
5 average weekly earnings cannot reasonably and fairly be applied,
6 the average weekly earnings shall be taken at 100 percent of the
7 sum which reasonably represents the average weekly earning
8 capacity of the injured employee at the time of his or her injury,
9 due consideration being given to his or her actual earnings from
10 all sources and employments.

11 (d) Every computation made pursuant to this section beginning
12 January 1, 1990, shall be made only with reference to temporary
13 disability or the permanent disability resulting from an original
14 injury sustained after January 1, 1990. However, all rights existing
15 under this section on January 1, 1990, shall be continued in force.
16 Except as provided in Section 4661.5, disability indemnity benefits
17 shall be calculated according to the limits in this section in effect
18 on the date of injury and shall remain in effect for the duration of
19 any disability resulting from the injury.

20 SEC. 3. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.